IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.493 of 1999

Judgment Reserved on 23.3.2007

Date of decision 26.3.2007

State of H.P. Appellant

Versus

Sohan Singh and another Respondents

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr.K.D..Sood, Advocate, for respondent No.2.

V.K.Ahuja, J.

This is an appeal filed by the appellant-State against the judgment of the court of learned Judicial Magistrate Ist Class, Bilaspur dated 31.3.1999 vide which both the accused were acquitted of the charges framed against them under Sections 323, 341, 324 read with Section 34 IPC.

Briefly stated the facts of the case are that on receipt of information the police went to the hospital and recorded statement of one Garja Ram. He stated that he is doing the work of carrying of material as a labouerer on his mules and respodnentNo.1 Sohan Singh had asked him for carrying of his sand and concrete about 15-20 days ago. He had declined to carry the material as he had no spare time. On 23.4.1997 at about 9 a.m. when Garja Ram was carrying the stones of one Bhag Singh on his mule and while crossing the house of respondent No.1 he asked him as to why he is not carrying his construction material. He came out with danda and gave betings on the person of garja Ram. In the meanwhile his son respondent no.2 Jasbir Singh alais Bittu came along with an iron rod and

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

gave blows on the person of Garja Ram who suffered injuries, blood oozed out from his person. On this report a case was registered and after investigation the challan was filed again both the respondents, who were tried by learned trial court, resulting in their acquittal.

Respondent No.1 Sohan Singh as per the copy of death certificate filed today is already dead.

The submissions made by Mr.Ashutosh Burathoki, learned Additional Advocate General were that there were minor contradictions in the statements of witnesses whose statements wrongly were not relied upon by the learned trial court. It was also submitted that even though respondent No.1 is dead, respondent No.2 can be held guilty with the assistance of Section 34 IPC and as such the findings to the contrary are liable to be reversed.

On the other hand, Mr.K.D.Sood, learned counsel for respondent No.2 has submitted that there is scanty evidence on record in regard to the presence of respondent No.2 and the main allegations were as against respondent who is already dead and in view of the contradictions and infirmities, the learned trial court had rightly acquitted respondent No.2 and those findings cannot be said to be perverse calling for an interference by this Court.

On appraisal of the evidence, it is clear that the complainant stated that when he was given beatings wife of Bir Singh, wife of Kartar Singh and Tulsi Ram came there and saved him from the clutches of the accused persons. It is clear from his deposition that firstly respondent No.1 now dead had come to the spot had given him beatings and thereafter respondent No.2 came there along with iron rod and gave him beatings. Smt.Ishwari Devi who was stated to be present there at that time being wife of one Kartar Singh has been examined as PW-6. Her presence was clearly stated by the injured in his report to the police. She has clearly stated that no other person was present at the spot at that time who gave beatings to the injured, meaning thereby that she has ruled out

the presence of respondent No.2 at the spot at that time. She admitted her inimical relations with the accused party but has not stated anything against respondent No.2 or about his presence, though respondent No.2 is the son of respondent No.1. In such circumstances when she was inimical and still she has not named respondent No.2 being present at the spot, her statement does inspire confidence. PW-5 has been examined as an eye witness who was not named by the complainant being present at that stage. He has stated that when he reached there both the respondents were giving beatings to Garja Ram who was unconscious at that time and blood was oozing out from the injuries. He stated that at that time the ladies were rescuing the injured, while the injured and accused Sohan Singh were grappling with one another. In view of the fact that the complainant has not stated about this witness being present at that stage, his version does not inspire confidence. PW-6 examined as another eye witness has stated that in her presence Sohan Singh gave blows on the person of Garja Ram and only Sohan Singh had given blowsat that time who is already dead.

From the above discussion of the evidence, it is clear that in view of the contradictory statements of witnesses in regard to the presence of respondent No.2 and the presence of witnesses also, the learned trial court had held that the case against respondent No.2 was also not proved beyond any reasonable doubt and in view of the contradictions and infirmities in the statements of the prosecution witnesses it cannot be said that those findings are perverse calling for an interference by this court and as such those findings do not call for an interference by this Court and are accordingly affirmed.

It follows that there is no merit in this appeal which deserves to be dismissed accordingly and the same is dismissed. Bail bonds furnished by the respondent shall stand discharged forthwith.

March 26,2007(g) **(V.K.Ahuja),J.**